IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8680 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

VIRBHADRASINH RANJITSINH GOHIL

Versus

DISTRICT DEVELOPMENT OFFICER

Appearance:

MR BIPIN I MEHTA for Petitioner

MR HS MUNSHAW for Respondent No. 1, 2

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 21/12/2000

ORAL JUDGEMENT

#. Rule. Mr.H.S.Munshaw waives service of rule on behalf of the respondents nos. 1 and 2.

#. By consent of the parties, the matter is taken up for

final hearing today.

#. In the present petition, the petitioner has challenged the order passed by the respondents by which the benefits of the Resolution dated 17.10.1988 were withdrawn. It is the case of the petitioner that, he was appointed on the post of Peon as daily wager on 13.5.1986. Initially, he was paid Rs.15.65 ps. as daily wage. Subsequently, he was given the benefits of the Resolution dated 17.10.1988 and he was placed in the pay scale of Rs.750 - 940. The aforesaid action of withdrawal is accordingly challenged in this petition.

#. This court by its order dated 2.12.1997 granted interim relief to the petitioner against the implementation of the said Resolution dated 17.10.1988 on the ground that, without hearing to the petitioner, such benefits could not have been withdrawn.

#. In the affidavit-in-reply, District Social Welfare Officer has stated that, benefits were wrongly given to the petitioner as he was not working on maintenance side and the resolution is applicable only to those who are working on such side and because of the audit objection, the said benefits were withdrawn. However, no adverse order can be passed against the employee without hearing him and it will have civil consequences as well. Therefore, decision to withdraw the aforesaid benefits is required to be set aside. It is not in dispute that the order was passed without hearing to the petitioner. Under these circumstances, the petition is required to be allowed. The decision of the respondents in withdrawing the benefits of the resolution dated 17.10.1988 is quashed and set aside and the order withdrawing the benefits which is passed on 27.11.1987 which is at Annexure-E to the petition is also quashed and set aside. The respondents therefore are restrained from reducing the pay-scale accordingly and will continue to give the said benefits. However, it is clarified that, since the order was passed without hearing to the petitioner, it will be open for the respondents to pass fresh order after hearing to the petitioner. If, any adverse order is passed, it will be open for the petitioner to challenge the same in accordance with law.

#. Subject to the aforesaid observations, this petition is allowed to the aforesaid extent. Rule is made absolute to the aforesaid extent with no order as to costs.

(P.B.Majmudar,J)

(pathan)